IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1939 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANWARMIYAN AKBERMIYAN SHAIKH HEIR AND L.R. OF PYARBIBI

Versus

KHATIJABIBI W/O RAHIMMIYA MULKUMIYAN

Appearance:

1. Civil Revision Application No. 1939 of 1995

MR DHIRENDRA MEHTA for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR EE SAIYED for Respondent No. 1/1/1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/05/2004

ORAL JUDGEMENT

One Pyaribibi, daughter of Sarfu Nizam and widow of one Akber Miyan Karim Miyan, filed a suit, being Regular Civil Suit No.39/1989, in the Court of Civil

Judge (J.D.) Bardoli. The said suit is filed as an administrative suit under the Muslim Law for declaration and possession of her share in the suit property and also for accounts. During the pendency of the suit, the plaintiff has died. The present petitioner, thereafter, submitted an application Exh.18 on the ground that he is the son of the deceased-plaintiff and prayed for amendment of the plaint permitting him to be brought on record in the suit and also submitted an application for condoning the delay. The trial Court rejected the said application, against which this Civil Revision Application is filed.

2) The learned trial Judge rejected the said application on the ground that the claim of the plaintiff that he has inherited the property by way of oral gift, is very difficult to accept, as such oral gift is not permissible.

3) Mr.Mehta, learned advocate for the petitioner submitted that the petitioner is otherwise also heir of the plaintiff, as he is the son of the plaintiff, and, he is entitled to continue the suit as heir of the deceased-plaintiff. He submitted that even his application may be treated as an application under Order 22 of C.P.C., for allowing him to be brought on record as heir of the plaintiff.

4) Mr.Saiyed, learned advocate appearing for the respondent, has also fairly conceded that the present petitioner is heir of the original plaintiff.

5) Considering the nature of the dispute and considering the above aspects of the matter, in my view, the petitioner being the son of the plaintiff, can certainly be allowed to be brought on record as the heir of deceased-plaintiff. Accordingly, the order of the trial Court is modified to the extent that the application of the petitioner is now to be treated as if it is an application made under Order 22 of the C.P.C. and the petitioner is permitted to be brought on record as heir of the deceased-plaintiff. Delay in filing such application is also condoned. The registry of the trial Court is directed to amend the title of the plaint accordingly, by which present petitioner may be described as heir of the deceased-plaintiff. Abatement of the suit, if any, shall stand set aside. It will be open for the petitioner, subsequently, to prefer appropriate application for amendment of the plaint, by taking whatever grounds available to him, as before the petitioner is allowed to be joined in the proceedings, he

cannot give any such amendment application. If any such application is preferred, the trial Court may decide it in accordance with law.

6) Accordingly, this revision is allowed to the aforesaid extent. Rule is made absolute accordingly. Interim relief stands vacated. No costs.

7) Writ to be sent to the trial Court forthwith.

(P.B.Majmudar,J.)

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